

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DWIGHT PURK

Plaintiff,

Case No. C-3-03-287

-vs-

District Judge Thomas M. Rose

**UNITED STATES OF AMERICA
INTERNAL REVENUE SERVICE**

Defendant.

ENTRY AND ORDER OVERRULING PLAINTIFF DWIGHT PURK'S ASSERTED 60(b) MOTION AND OBJECTIONS (DOC. #55) TO THE SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. #53) OF THE UNITED STATES MAGISTRATE JUDGE SHARON OVINGTON, ISSUED OCTOBER 5, 2005; ADOPTING SAID REPORT AND RECOMMENDATIONS IN ITS ENTIRETY; OVERRULING PLAINTIFF DWIGHT PURK'S OBJECTIONS AND/OR MOTION TO RECONSIDER THIS COURT'S ENTRY AND ORDER (DOC. #39) ISSUED AUGUST 30, 2005; DISMISSING WITH PREJUDICE THE CLAIMS OF PLAINTIFF DWIGHT PURK; GRANTING PLAINTIFF FELICIDAD PURK'S OBJECTIONS AND/OR MOTION TO RECONSIDER (DOC. #50) THIS COURT'S ENTRY AND ORDER (DOC. #39) ISSUED AUGUST 30, 2005, VACATING THIS COURT'S DISMISSAL OF THE CLAIMS OF PLAINTIFF, FELICIDAD PURK, AND REOPENING THIS CASE FOR THE ADJUDICATION OF THOSE CLAIMS ONLY, AND DENYING PLAINTIFF DWIGHT PURK'S MOTION FOR SHOW CASE ORDER (DOC. #52) AND DENIAL OF PLAINTIFF DWIGHT PURK'S "MOTION TO RELEASE TAX LIENS CONTACT DEFENDANT ATTORNEY ALEJANDRO L. BERTOLDO ON 9-2-05 CONCERNING SHOW CAUSE ORDER" (DOC. #54)

This matter is before the Court pursuant to the Supplemental Report and Recommendations (Doc. #53) filed by Magistrate Judge Sharon L. Ovington on October 5, 2005 and the "Motion to Reopen Pursuant to Rule 60(b) (2) Newly Discovered Documentary Evidence, Nancy Booker's Letter Dated June 27, 2005, 8 pages; Freedom of Information Act (FOIA) dated January 4, 2005, 23 pages; Rule 60(b)(3) Fraud Misrepresentation or Other Misconduct of and

Adverse Party; Joan Flach's Declaration Dated November 7, 2003; Claims Under 26 USC. Sec. 6331, 6321 and 7432 for the IRS' Failure to Release a Federal Tax Lien Within the Requirements of Timeliness for Tax Liens 1989 - 1991; For the Court to Review, and an Objection to Supplemental Report and Recommendations Ordered Dated October 5, 2005 Page 2 Number 1 Doc. 49, 51; Number 2 Doc. 52; Number 3 Dismissed with Prejudice" (Doc. #55-1) filed by Plaintiff, Dwight Purk on October 12, 2005."

Prior to the Supplemental Report and Recommendations (Doc. #53) issued October 5, 2005, the Magistrate Judge issued an original Report and Recommendations (Doc. #39) on February 4, 2005 which recommended that the Defendant Government's Motion to Enforce Judge Carl B. Rubin's Order be granted, Plaintiff Dwight Purk's Motions to Compel (Doc. #27 and 28) and other miscellaneous Motions and requests (Doc. #33, 34, 35, 36, 37 and 38) all be denied and the Complaint in this matter be dismissed, terminating the case. This Court, by subsequent Entry and Order (Doc. #48), filed August 30, 2005 adopted said Report and Recommendations dismissing Plaintiff's Complaint with prejudice and terminating the case.

On September 2, 2005, Plaintiff Dwight Purk filed with this Court an "Objection to Entry and Order dated August 30, 2005 or ask the Court to Reconsideration" (Doc. #49-1) followed by a pleading entitled "Add to Objection to Entry and Order 48 dated 8/30/05; filed dated Sept 2, 2005 Code Section 6325(a)(1)." (Doc. #51) Additionally, Plaintiff filed a third pleading entitled "Motion to Show Cause Order" (Doc. #52) on September 22, 2005.

Also objecting to the Court's Entry and Order was Intervening Plaintiff, Felicidad Purk, who filed an "Objection to Entry and Order dated August 30, 2005 and ask for the Court to Reconsider" (Doc. #50) on September 6, 2005.

In response to these numerous objections and pleadings, Magistrate Judge Sharon Ovington issued a Supplemental Report and Recommendation (Doc. #53) on October 5, 2005. In that Report and Recommendation the Magistrate recommended that this Court overrule the Plaintiff Dwight Purk's Objections (Doc. #49 and 51) to the Court's previous Entry and Order (Doc. #48) and denial of Plaintiff Dwight Purk's Motion for Show Cause Order (Doc. #52). In addition, the Magistrate found the Objections (Doc. #50) of Felicidad Purk were well-founded and that the Court should reconsider its Entry and Order vacating the dismissal of Plaintiff Felicidad Purk's claims and reopen the case for the limited purpose of litigating her claims only.

Finally in response to the Magistrate Judge's Supplemental Report and Recommendations (Doc. #53) Plaintiff Dwight Purk filed a pleading entitled "Motion to Reopen pursuant to Rule 60(B)(2) Newly Discovered Documentary Evidence, Nancy Booker's letter dated June 27, 2005, 8 pages; Freedom of Information Act (FOIA) dated January 4, 2005, 23 pages; Rule 60(B)(3) Fraud Misrepresentation or other Misconduct of and Adverse Party; Joan Flach's Declaration date November 7, 2003; Claims Under 26 U.S.C. Section 7433 Improper Filing of Liens in Violation of 26 U.S.C. Section 6331, 6321 and 7432 for the IRS' Failure to Release a Federal Tax Lien Within the Requirements of Timeliness for Tax Liens 1989-1991; for the Court to Review and an Objection to Supplemental Report and Recommendations Ordered Dated October 5, 2005 Page 2 Number 1 Doc. 49, 51, Number 2, Doc. 52 Number 3 Dismissed With Prejudice" (Doc. #55)

As required by 28 U.S.C. Section 636(b) and Federal Rule of Civil Procedure 72(b) this District Judge has made a de novo review of the record in this case and finds the pleadings filed by Plaintiff Dwight Purk, which the Court considers objections (Doc. #55) to the Supplemental Report and Recommendations (Doc. #53) not well-founded and OVERRULES same. The Court

ADOPTS in their entirety the Supplemental Report and Recommendations (Doc. #53) of the Magistrate Judge reaffirming the dismissal, with prejudice, of Plaintiff Dwight Purk's claims as ordered in the Court's original Entry and Order (Doc. #48) and denying Plaintiff Dwight Purk's Motion for Show Cause Order (Doc. #52).

As to Plaintiff Felicidad Purk's objections and/or Motion for Reconsideration (Doc. #50), the Court finds said objection/motion well-founded and VACATES its previous dismissal of Felicidad Purk's claims as an intervening plaintiff. This case is ORDERED reopened solely for the limited purpose of further adjudication of Plaintiff Felicidad Purk's claims.

Finally, the Court has considered the latest pleading by Plaintiff, Dwight Purk, titled "Motion to Release Tax Liens 1989-1991 Contact Defendant Attorney Alejandro L. Bertoldo on 9-28-05 Concerning Show Case Order" (Doc. #54) filed on October 6, 2005 after the issuance of the Supplemental Report and Recommendations. Due to the dismissal, with prejudice, of all claims by Plaintiff Dwight Purk by Entry and Order (Doc. #48) which has now been reaffirmed by this Entry and Order, said Motion (Doc. #54) is DENIED.

IT IS SO ORDERED.

December 2, 2005

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE